

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 07-Cr-285

JOHARI WALKER,

Defendant.

MAGISTRATE JUDGE'S RECOMMENDATION TO THE
HONORABLE LYNN ADELMAN AND ORDER

On April 3, 2007, a federal grand jury sitting in this district returned a three-count indictment against Quinton J. Smith and Johari Walker. Defendant Walker filed a pretrial motion to suppress physical evidence and requested an evidentiary hearing. The court denied the defendant's request for an evidentiary hearing and issued a recommendation to Judge Stadtmueller recommending that defendant Walker's motion to suppress physical evidence be denied. On July 13, 2007, United States District Judge J.P. Stadtmueller, to whom the case was assigned, dismissed the indictment against defendant Walker without prejudice. The court did not rule on this court's recommendation before dismissing the indictment.

On November 6, 2007, a federal grand jury returned a three-count indictment against defendant Johari Walker which contains the identical charges as set forth in the April 2, 2007, indictment. The defendant is charged in Count One with possessing with intent to distribute a mixture and substance containing cocaine base in the form of "crack" cocaine, a Schedule II controlled substance, in violation of 21 U.S.C. § 846(a)(1), § 841(b)(1)(A) and 18 U.S.C. § 2.

Count Two charges the defendant with possessing a firearm in furtherance of the drug trafficking offense charged in Count One of the indictment, in violation of 18 U.S.C. §924(c)(1)(A)(i) and 2. Count Three of the indictment charges the defendant with being a convicted felon in possession of a firearm, in violation of 18 U.S.C. 922(g)(1), 924(a)(2) and 2.

On November 9, 2007, the defendant appeared before United States Magistrate Judge Aaron E. Goodstein for arraignment and entered a plea of not guilty to the charges. Pursuant to the pretrial scheduling order issued at that time, the defendant filed a motion to suppress physical evidence and a request for an evidentiary hearing. (Docket # 8).

In a November 29, 2007, letter filed with the motion, counsel for the defendant states that he is re-filing the motion to suppress on behalf of the defendant to preserve her right to appeal the court's recommendation to the district court. (Docket # 7). Counsel further states that the new indictment charges the same crimes as charged in the original indictment and that discovery in both cases is identical with no new facts presented.

In light of the foregoing, the court will adopt its prior order dated May 29, 2007, in Case No. 07-Cr-86 denying the defendant's request for an evidentiary hearing a copy of which is attached hereto. Since the charges in the current indictment are identical to those in the original indictment and the discovery materials are identical, the court will adopt the July 6, 2007, recommendation issued in Case No. 07-Cr-86 as its report and recommendation in this case. A copy of the court's recommendation to Judge Stadtmueller is attached to this decision.

CONCLUSION

NOW, THEREFORE, IT IS HEREBY RECOMMENDED that the United States district judge enter an order **denying** defendant Johari Walker's motion to motion to suppress physical evidence. (Docket #8).

IT IS ORDERED that defendant Johari Walker's request for an evidentiary hearing be and hereby is **denied**.

Your attention is directed to 28 U.S.C. § 636(b)(1)(A), (B) and (C), Federal Rule of Criminal Procedure 59(a) and (b), and General Local Rule 72.3 (E.D. Wis.), whereby written objections to any order or recommendation herein or part thereof may be filed within ten days of the date of service of this recommendation and order. Objections are to be filed in accordance with the Eastern District of Wisconsin's electronic case filing procedures. Courtesy paper copies of any objections shall be sent directly to the chambers of the district judge assigned to the case. Failure to object in accordance with the rules cited herein waives your right to review.

Dated at Milwaukee, Wisconsin this 4th day of December, 2007.

BY THE COURT:

s/ Patricia J. Gorence
PATRICIA J. GORENCE
United States Magistrate Judge